

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DARION MUHAMMAD-COLEMAN,

Case No. 3:23-cv-00012-ART-CLB

Petitioner,

Order Setting Briefing Schedule

v.

LAGRAND, et al.,

Respondents.

On April 6, 2023, the court granted Darion Muhammad-Coleman's request to appoint counsel and appointed the Federal Public Defender to represent petitioner. (ECF No. 7.) On May 3, 2023, Kimberly Sandberg of the Federal Public Defender's Office appeared on behalf of petitioner. (ECF No. 11.)

IT IS THEREFORE ORDERED that counsel for Petitioner meet with Petitioner as soon as reasonably possible to: (a) review the procedures applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with Petitioner, as fully as possible, the potential grounds for habeas corpus relief in Petitioner's case; and (c) advise Petitioner that all possible grounds for habeas corpus relief must be raised at this time and that the failure to do so will likely result in the omitted grounds being barred from future review under the rules regarding abuse of writ.

IT IS FURTHER ORDERED that counsel for Petitioner file an amended petition for writ of habeas corpus within **90 days**, which includes all known grounds for relief (both exhausted and unexhausted).

IT IS FURTHER ORDERED that Respondents file a response to the petition within **90 days** of service of the petition. Petitioner will then have **45 days** from service of the answer, motion to dismiss, or other response to file a reply or opposition. Any other motions will be subject to the normal briefing schedule under the local rules.

1 Any response to the petition must comport with Habeas Rule 5.

2 Additionally:

3 1. Any procedural defenses raised by Respondents in this case must be
4 raised together in a single, consolidated motion to dismiss. In other
5 words, the court does not wish to address any procedural defenses raised
6 herein either in seriatum fashion in multiple successive motions to
7 dismiss or embedded in the answer. Procedural defenses omitted from the
8 motion to dismiss will be subject to potential waiver.

9 2. Respondents must not file a response in this case that consolidates their
10 procedural defenses, if any, with their response on the merits, except
11 under 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
12 lacking merit. If Respondents do seek dismissal of unexhausted claims
13 under § 2254(b)(2): (a) they must do so within the single motion to
14 dismiss, not in the answer, and (b) they must specifically direct their
15 argument to the standard for dismissal under § 2254(b)(2) set forth in
16 *Cassett v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005). In short, no
17 procedural defenses, including exhaustion, should be included with the
18 merits in an answer. All procedural defenses, including exhaustion, must
19 instead be raised by motion to dismiss.

20 3. In any answer filed on the merits, Respondents must
21 specifically cite to and address the applicable state-court written decision
22 and state-court record materials, if any, regarding each claim within the
23 response as to that claim; and Respondents must file a set of state court
24
25
26
27
28

1 exhibits relevant to the response filed to the petition. Those exhibits must
2 be filed chronologically and be accompanied by a separate index of exhibits
3 identifying the exhibits by number. Each exhibit must be a separate
4 attachment, and the CM/ECF attachments that are filed must be identified
5 by the number of the exhibit in the attachment. The purpose of this
6 provision is to allow the court and any reviewing court thereafter to quickly
7 determine from the face of the electronic docket sheet which numbered
8 exhibits are filed in which attachments. Respondents must send a hard
9 copy of all pleadings and indices of exhibits **ONLY** filed for this case to the
10 Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed to the
11 attention of "Staff Attorney" on the outside of the mailing address label.
12
13

14
15 DATED THIS 8th day of May 2023.

16
17
18 
19

20
21 ANNE R. TRAUM
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28